

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

SRI INTERNATIONAL, INC., a California
Corporation,

Plaintiff and
Counterclaim-Defendant,

v.

INTERNET SECURITY SYSTEMS, INC.,
a Delaware corporation, INTERNET
SECURITY SYSTEMS, INC., a Georgia
corporation, and SYMANTEC
CORPORATION, a Delaware corporation,

Defendants and
Counterclaim-Plaintiffs.

C. A. No. 04-1199 (SLR)

PLAINTIFF'S SUPPLEMENTAL NOTICE OF APPEAL

Pursuant to the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure, Plaintiff SRI hereby appeals to the United States Court of Appeals for the Federal Circuit from the Court's Summary Judgment Order entered on October 17, 2006 (Docket Nos. 471 and 472), its Judgment in a Civil Case entered on October 27, 2006 (Docket No. 473), and its Order Granting Rule 54(b) Certification, entered on January 16, 2007 (Docket No. 489). SRI believes its prior Notice of Appeal, filed on November 14, 2006 (Docket No. 475), was premature because the Court had not yet disposed of the parties' unadjudicated counterclaims. SRI is aware that the Federal Circuit, in *State Contracting & Engineering Corp. v. State of Florida*, 258 F.3d 1329, 1335 (Fed. Cir. 2001), indicated that a Rule 54(b) certification can cure a previously premature Notice of Appeal, and that the Federal Circuit suggested in that case that the Rule 54(b) order need not explicitly indicate that it is a *nunc pro tunc* ruling. However, the Rule 54(b) certification in question in *State Contracting* was, in fact, a *nunc pro tunc* ruling. As a result, SRI is not aware of any case in which the Federal Circuit has

expressly held that a subsequent notice of appeal is unnecessary on the facts presented here. Accordingly, and out of an abundance of caution, SRI files this Supplemental Notice of Appeal and requests that the clerk forward this notice to the Federal Circuit at its earliest possible convenience. SRI intends to ask the Federal Circuit to consolidate this appeal with Case No. 2007-1065 once this appeal is docketed.

Dated: February 15, 2007

FISH & RICHARDSON P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2007, I electronically filed with the Clerk of Court the attached, **PLAINTIFF'S SUPPLEMENTAL NOTICE OF APPEAL**, using CM/ECF which will send electronic notification of such filing(s) to the following Delaware counsel. In addition, the filing will also be sent via hand delivery to:

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I hereby certify that on February 15, 2007, I mailed by Federal Express and email, the document(s) to the following non-registered participants:

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